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Supreme Court, U.S.
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No. 041694 JUN 14 2005

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IN THE

Supreme Court of the United States

Brian Asarnow,

Petitioner

v.

State of New Jersey,
Superior Court of New Jersey

Respondent(s)

On Petition For Writ Of Certiorari
To The Superior Court of New Jersey, Appellate Div.

PETITION FOR WRIT OF CERTIORARI

Mr. Brian D. Asarnow, Pro Se
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QUESTIONS PRESENTED

1. Does the denial of substantive adjudication constitute denial of meaningful access to the courts?

2 Should states be held accountable for intentionally depriving a resident meaningful post filing access to its civil courts if certain criteria are met?

3 If question two is affirmative, what is the statute of limitations and accrual period to be applied in this and other matters pled directly from US and State Constitutions and not involving personal injury tort, 42 USCS Sec 1983, Laws against Discrimination, and Bivens claims.

4. If question two is affirmative, shouldn't a resident be entitled to damages for loss of one's due process and equal protection rights in themselves as well as compensatory damages and damages for emotional and physical distress, as afforded in 42 USCS 1983 actions?

5. Is it a question of first impression that a state defendant be held accountable in its own court by a resident previously deprived of meaningful access to its civil courts, not in error.

6. Did the lower court err when it counted the time for the statute of limitations?

7. Should the entire matter have been dismissed based upon the accrual period in the car matter, when the two other matters could have been brought separately and are within the court's same period of accrual?

8. Does a plaintiff get meaningful access to the courts if judges dismiss the action for reasons that are

unsupported and which are affirmed on appeal?

9. Is an appraisal report or other special showing required to gain standing, pre-discovery to have zoning and other laws reasonably enforced within 200 feet of one's property?

10. Should credibility and existence of oral agreements and other intangible evidence immune from review, be allowed to replace hard evidence in making decisions?

LIST OF PARTIES

The parties are those shown on the cover of the petition.

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No separate opinions have been issued or published. The court may refer to Appendix D which contains transcript portions with any opinions contained therein.

JURISDICTION

The New Jersey Supreme Court denied Certification on March 16, 2005.
A copy of that decision appears at Appendix C.-

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISONS INVOLVED

(See Appendix E)
US Constitution; 7th Amendment,
14th Amendment, section 1.
NJ Constitution; Article 1, sections 1, 9 and 21.

STATEMENT OF THE CASE

Petitioner resident sued State and its Superior Court in State Court on August 26, 2002 for purposeful and egregious denial of substantive adjudication in two earlier civil matters.

Prior to this on May 30, 2000, petitioner attempted a common law constitutional action in federal court for injunctive relief and damages (Docket C-OD-2567 and Appeal Docket 00-3676 – third circuit) which was dismissed based upon 11th Amendment immunity and the Rooker-Feldman Doctrine. (Petitioner argued that as actual adjudication of issues and findings were lacking and unresolved issues remained, Rooker Feldman should not apply).

Petitioner also corresponded with the NJ Administrative Office of the Courts (AOC), the Division of Criminal Justice and the chairman of the Senate Judiciary Committee as to the lack of adjudication and possible corruption involved in these matters.
Petitioner's April 22, 2002 letter to the chair of Senate Judiciary Committee seeks state police investigation as to why the zoning laws are palpably not being enforced.
Though no exhaustion of remedies is required for constitutional actions, i.e. under 42 USCS sec. 1983, petitioner has done so.

The issue is whether a remedy exists when a state acts in bad faith to deprive a resident of meaningful access to its courts, post filing. This is not to be confused or equated with wrongful decisions made in good faith for which the remedy of appeals, hopefully heard in good faith, exists. [The State Appellate Div does not care to make the distinction and self-servingly spins the matter as one of plaintiff simply being a dissatisfied litigant; "In two counts, Plaintiff's complaint alleged that State defendants deliberately wronged him by issuing adverse rulings in two civil lawsuits in which he was a party" (Appellate Div opinion)] Petitioner maintains he has yet to receive one substantive bite at the apple where all laws are applied to him as to others on the real issues in question. Petitioner further claims this is not in error and has resulted in the following perverse decisions:

In the first matter, Petitioner had to pay someone for the privilege of storing their car for them for three years though they caused the problem at issue and would neither remove a car or pay any storage fees. The adversary's admitted knowledge of the closing on Petitioner's building coincides with the sending of Petitioner's two certified letters which inform him about the closing date and the need to remove or pay storage fees. (See Appendix F for detailed excerpts from the verified complaint)

In the second matter, a 42 USCS sec. 1983 action, Long Branch, its mayor and business administrator and the Long Branch Sewerage Authority and its executive director were defendants. Petitioner was to pay for all engineering and costs of extending the sewer main to his property while his neighbors immediately adjacent to him upstream had only to pay connection and usage fees to obtain service. Also, Petitioner was denied standing, (without a hearing), for even ordinary equitable relief to have zoning laws enforced on properties immediately adjacent to and across the street from his own commercial property, and was retaliated against by Long Branch for seeking enforcement of ordinances. The trial court allowed Long Branch to stall and evade follow-up interrogatories and failed to adjudicate or render findings on 12 remaining counts of the complaint while substituting itself as jury on the one count it adjudicated regarding selective enforcement. (Virtually all the judges assigned to the matter either come from the vicinity of defendant Long Branch or appear to have some connection to Long Branch and its Sewerage Authority and their respective attorney's law firm and the Long Branch Mayor or to those looking out for Plaintiff's neighbor) The Appellate Div. affirms that Plaintiff "**has no standing to claim dereliction in the enforcement of ordinances**", (Appendix A) yet questions Petitioner during oral "argument" (no rebuttal allowed) about whether the neighbors had any permits, thus demonstrating its bad faith and Petitioner's true standing. Under the Land Use Act, it is well known that those within 200 feet of a property proposing certain improvements are automatically deemed to have standing to receive notice and to comment/object at zoning hearings without need for appraisals or other arbitrary impediments to prove standing. An appraisal was later submitted as part of discovery and showed damages attributable to Long Branch's failure to enforce the zoning ordinances. It was nevertheless ignored by the trial court. Long Branch is an active participant in allowing the one neighbor to evade the permitting process for the illegal

nonconforming use which continues to increase. (The neighbor, an asphalt contractor, received many summonses around 1997 from a zoning officer since terminated, and subsequently filed two site plans which were dismissed for lack of prosecution) The refusal to enforce is palpably unreasonable (no limitation of resources was ever argued by Long Branch) and therefore illegal and corrupt to all, it seems, but the NJ courts. The state department of environmental protection (DEP) was notified that petitioner's neighbor has paved and improved and is stockpiling dirt and other materials adjacent to a brook without permits, in violation of DEP and land use regulations prohibiting development within 100 feet of a flowing body of water. Instead of enforcing the law, they sought to retaliate against petitioner's business under the guise of a new inspection program. (See Appendix F for further details)

Following the second matter, the lower court improperly ordered Plaintiff to pay $3022.93 in costs including Supreme Court and Appellate Div. Costs, contrary to current statutes and against strong state policy to settle (the parties had earlier executed a voluntary settlement which disposed of all issues). (See Appendix F for details) Petitioner believes the trial judge, who professed experience in deciding many costs motions, was improperly using the occasion to exact revenge for personal reasons, specifically for Plaintiff's criticism of and reporting to AOC of his fellow Monmouth judges. He still serves in Monmouth,. though the Director of AOC, a judge, was notified about this, as well. Nevertheless, after 3 cost hearings at taxpayer's expense, Long Branch then withdrew the awarded costs in return for Plaintiff's promise not to sue for breach of contract or further appeal the costs Order. The court had nothing to do with this settlement and its actions are not justified nor serve any legitimate State purpose under equal protection or otherwise.

Though the costs issue and the sewer matter may be moot as to the main extension (the sewerage authority still fails

to return $1050 for engineering of the main) Petitioner nonetheless seeks damages for loss of his due process and equal protection and property rights in themselves, as well as compensatory damages and damages for emotional and physical distress, as available under 42 USCS 1983 and Bivens actions. ("42 USCS sec. 1983 Plaintiff is entitled to receive compensatory damages for loss of inherent value of rights under establishment clause of First Amendment violated by defendants, even if plaintiff is unable to demonstrate consequential injury" *Bell v. Little Axe Indep. School Dist.* 766 F2d 1391, 1412 (CA10 Okla. 1985),. "Federal law sanctions recovery of compensatory damages that include recovery for nonpecuniary injuries such as emotional distress, humiliation, embarrassment, personal indignity, loss of personal and business reputation, and loss of enjoyment of life, caused by violation of constitutional rights" *Florey v. District Court* 713 F.2d 840 (Colo. 1985) "Claims of violation of constitutional right of due process, including court access – or other fundamental constitutional rights – do not require proof of actual injury" *Messere v. Fair*, 752 F. Supp. 48, 51 (D.C. Mass 1990) Petitioner's common law complaint pled directly upon sections of the US and NJ constitutions and did not invoke 42 USCS sec 1983 or name judges since the State is not a person amenable to 1983 action and judges are immune in their official capacity. (Appendix F) The civil case information statement (CIS) had both "constitutional and tort claim seeking damages" as the case description.
In keeping with federal and state Rules, the verified and amended complaints fairly apprised the adverse party of the Constitutional claims and issues raised.

The trial court attempted to find several grounds for dismissing the entire complaint, pre-discovery, before finally settling upon use of a faulty accrual date and exceeding the 2 year state personal injury statute of limitation as the best way to achieve its obvious, predetermined goal of dismissal. Based upon this faulty

procedural dismissal, it then denied Plaintiff the right to amend his complaint. Nevertheless, the last * two matters fall within the court's own two year period and were similarly dismissed along with the earliest matter.(See transcripts, appendix D) The dismissal was affirmed in full on appeal (Appendix A) and certification to the NJ Supreme Court was denied (Appendix C).

Petitioner argued that as neither count of the complaint pled 42 USCS S 1983, and the first count made no mention of the tort claim act, dismissal based upon an accrual time which applies to those matters is arbitrary and denies justice. (The court and defendants submit only personal injury and 42 USCS S 1983 cases to support the dismissal) It is clear that for constitutional torts brought pursuant to 42 USCS S 1983 (i.e *Wilson v. Garcia*, 471 U.S. 261, 105 S.Ct. 1938 (1985) and Bivens complaints, (i.e., *King v. One Unknown Fed. Corrections Officer*, 201 F.3d 910, 913 (USCA 7th Cir. 2000) "The statute of limitations for both sec. 1983 and Bivens actions is determined by the statute of limitations for personal injury actions in the state where the incident forming the basis of the claim occurred") the state personal injury statue of limitations is to be borrowed with the time of accrual to be based upon federal law. Though similar to Bivens in that Petitioner pleads directly upon sections of federal and state constitutions, no such cases can be found which name State as defendant for denial of due process, equal protection, substantive adjudication or meaningful access to the courts, post filing, in civil matters. Therefore, it can be argued that the statute of limitations deriving from federal common law and which is to be the same in all states, could apply to Petitioner's common law complaint. See *US v. Schwartz*, 787 F.2d 257, 267 (7th Cir.1986) wherein "Supervisory power of federal courts is power to formulate rules of common law when neither

* The third issue ripened on August 29, 2003 and appears in the second and third amended complaints. (See Appendix F page 44)

Constitution nor statute supplies rules of decision". However *Kobatake v. E.I Dupont De Nemours & Co.*, 162 F.3d 619, 624 (C.A. 11 Ga. 1998) rehearing denied, certiorari denied, 120 S. Ct. 284, indicates application only to those matters "concerned with the rights and obligations of the US, interstate and international disputes implicating conflicting rights of States or relations with foreign nations and admiralty cases" However, as demonstrated by the egregious refusal to apply operative law and recent occurrence of the costs matter (August 29, 2003), the deprivations can be considered continuous. (The zoning violations and unequal enforcement of laws by Long Branch is also ongoing and continuous and the statute of limitations has not yet even begun.) "In most federal causes of action, when defendant's conduct is part of continuing practice, action is timely so long as last act evidencing continuing practice falls within limitations period" *287 Corporate Center Associates v. Bridgewater*, 101 F.3d 320, 324 (USCA 3rd Cir.1996), See also *Farbenfabriken Bayer, A.G. v. Sterling Drug, Inc.* 153 F. Supp. 589 (NJ 1957), 197 F. Supp 627, affirmed 307 F2d 210, cert. denied.)

Nevertheless should the court grant the Petition and thereafter determine that a states personal injury statute of limitation should apply, the time of accrual utilized by the trial court does not comply with federal law as the actual "injury" did not occur until funds were turned over in the car matter. (See below "Reasons for Granting Writ")

Raising of Federal Questions [Rule 14 (g) (i)]:

Petitioner first raises the federal questions of meaningful access, equal protection and due process in the trial court in the verified complaint. See Appendix F pages 32&33, and pages 40-43, 45 & 46 (all relevant portions in bold) The trial court dismissed the complaint for failure to state a claim due primarily to exceeding of the statute of limitations. Three motions to Alter or Amend Order and to

Amend the Complaint were denied.

The Legal basis of Petitioners Complaint:

Petitioner essentially claims he has been deprived of his property and rights without due process, due to a denial of meaningful access to the courts (substantive adjudication) in violation of U.S.Const. 7th and 14th amendments and sections of the NJ Constitution. (See pleadings as referenced in "Raising of Federal Questions, preceding. Petitioner only seeks that state and federal laws and court rules be applied to him as to other litigants. Petitioner is entitled to assume that the Rule of Law is to be followed in this state and country, as regularly attested to by the President in appealing to dictatorships. *Mackenzie v. City of Rockledge*, 920 F.2d 1554, 1559 (11th Cir. 1991) holds "Unequal application of state law may violate equal protection clause." (U.S.C.A Const. Amend 14)
In *Hennigh v. City of Shawnee*, 155 F3d 1249, 1253 (10th Cir. 1998) held that "'procedural due process'" ensures that a state will not deprive a person of life, liberty or property unless fair procedures are used in making that decision, while 'substantive due process' guarantees that the state will not deprive a person of those rights for an arbitrary reason regardless how fair the procedures are that are used in making the decisions." In *Howard v Grinage*, 82 F3d 1343, 1349 (6th Cir. 1996) held "'Substantive due process' serves goal of preventing governmental power from being used for purposes of oppression, regardless of the fairness of the procedures used."
In *Felker v. Christine*, 796 F. Supp. 135, 143 (DC MD 1992) affirmed 983 F.2d 1050 held "'substantive due process violations' are generally those that are so arbitrary and unreasonable that they lack substantial relation to public health, safety and welfare."

Meaningful access to the courts:
As held in *Cochran v. Pinchak*, 401 F.3d 184, 193; 30 NDLR P5, (3d Cir N.J., Mar. 15, 2005) "A State's

robust due-process obligation to provide meaningful access to the courts is much more expansive that the wide latitude a State enjoys in equal protection cases that do not involve a suspect classification or a fundamental right." Unlike equal protection claims, meaningful access does not depend on the existence of similar classes similarly treated to achieve vindication. *Tennessee v. Lane* 124 S. Ct 1978 (2004) also indicates that damages due to denial of meaningful access are not impaired by a state claiming 11th amendment immunity.

Criminals have a right to meaningful access to the courts pre and post incarceration and are provided a remedy by way of 42 U.S.C.S. S 1983 and habeas corpus to effect this right. "Due process clause of Fourteenth Amendment guarantees state inmates right to adequate, effective, and meaningful access to courts. *Petrick v. Maynard*, 11 F3d 991, 994 (C.A. 10 Okla. 1993) "For equal protection purposes, access to the courts is a fundamental right." *Imprisoned Citizens Union v. Shapp*, 11 F.Supp 2d 586, 602 (DC ED PA 1998) affirmed 169 F3d 178.See also *Bounds v. Smith*, 430 U.S. 817, 821, 828, 97 S. Ct. 1491, 52 L.Ed.2d 72 (1977), *Johnson v. Avery*, 393 U.S. 483, 485 (1969) *Younger v. Gilmore*, 404 US 15 (1971), *Ex Parte Hull*, 312 US 546, 549 (1941) finding that the right to habeas corpus is not to be impaired by the state.

This right afforded to criminals also serves as the basis for vindicating other meaningful access claims and rights, pre-filing of the complaint. It also extends beyond providing physical access. As held in *Germany v. Vance*, 868 F.2d 9, 11 (1st Cir. 1989), a 42 USCS sec 1983 matter, "It can be a deprivation "of life, liberty or property, without due process of law" in violation of the Fourteenth Amendment, for state officials to deny a person "access to the courts." citing from *Bounds v. Smith* . See also *Rogan v. City of Boston*, 267 F.3d 24, 28 (1st cir. 2001) which relies on this same citation as found in *Germany v. Vance*. In *Swekel v. City of River Rouge*, 119 F.3d 1259, 1262 (6th

Cir. 1997), "The right of access in its most formal manifestation protects a persons right to physically access the court system. Without more, however, such an important right would ring hollow in the halls of justice" (emphasis added) citing *Chambers v. Baltimore & Ohio R.R.*, 207 U.S. 142, 148 (1907). "In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship..." "Access to courts does not only protect one's right to physically enter the courthouse halls, but also insures that the access to courts will be "'adequate, effective and meaningful.'" citing *Bounds v. Smith* at 822.

As further found in *Swekel* at 1263, "A court must analyze several factors before deciding whether a person's fundamental right of access to the courts has been violated. First, a court must ascertain whether the abuse occurred pre- or post- filing. When alleged violation of right of access to courts transpires post-filing, the aggrieved party is already in court and that court usually can address the abuse, and thus, an access to courts claim typically will not be viable." citing *Bounds v. Smith* at 1495. As the within matter demonstrates, however, the court will not address the abuse when it is itself a Defendant and the cause of the abuse, making the within action necessary..

It therefore follows that denial of substantive due process post-filing is a denial of meaningful access and must be subject to vindication using a meaningful accrual period and statute of limitations.

Regarding whether this action is cognizable under the New Jersey Constitution, as held in *Peper v. Princeton Univ. Bd. of Trustees*, 389 A2d 465 at [15] (1978 NJ Supreme. Ct.), "Both the majority and the dissent in *King v. So. Jersey Nat. Bank*, 66 N.J. 161, 177, 193-194, 330 A2d 1 (NJ Supreme Ct. 1974), concluded that this Court has the power to enforce

rights recognized by the New Jersey Constitution, even in the absence of implementing legislation" (emphasis added) citing other cases therein. (Tort Notice, 42 USCS sec 1983, naming of individuals or judges are not required to vindicate one's constitutional rights or cause for dismissal of a complaint for lack thereof.) Under [16] held "While the NJ Constitution (1947) like its1844 predecessor, has no specific equal protection clause analogous to that in the Fourteenth Amendment, our State Constitutions have been construed to provide analogous or superior protections to our citizens. In fact, Art. 1, para. 1 has been most frequently referred to as the basis of our Constitution's equal protection guarantees.", citing other cases therein.

REASONS FOR GRANTING THE WRIT

I. The within matter demonstrates the need for a remedy in order to promote justice, deter corruption, and enable accountability of the state and its judiciary for good cause shown.

A basic flaw exists in our judicial system, especially in states where judicial elections, which can impart some accountability, do not exist. There is no guarantee that judges will always act in good faith and provide substantive adjudication, especially when they think they can get away with it.

This occurs in New Jersey because the judges can obtain lifetime tenure after 5 years. Since the US Supreme Court hears only about 80 or so cases a year, there is certainly no credible deterrent to the courts doing anything they want. Furthermore, even though this esteemed US Supreme Court may have already decided an issue and made law, the State courts may still purposely misinterpret or ignore this under guise of error, which necessitates further appeals on these issues already decided as law. It also occurs due to a lack of credible deterrent and supervision by the State itself. The Senate Judiciary Committee which has control over the

selection and removal of judges is controlled by attorneys who make their living practicing law before these same judges. This explains why judges in NJ are seldom, if ever, removed for failing to do their job and provide substantive adjudication. The key court personnel are chosen and supervised by the supreme court justice with, it seems, the main objective of keeping the public in the dark as much as possible.

Similar to the use of attorneys and awarding of counsel fees under 42 USCS S 1988 as "an army of attorney generals" in vindicating client's constitutional rights against state officials, another mechanism is needed against a state itself acting in bad faith to deny justice. And if a court should still not yet take this seriously and properly hear that matter, perhaps a summary method could be employed pursuant to Rule 20 and monitored pursuant to Rule 22, with heavy fines issuing for noncompliance. Monitoring by a federal district judge in conjunction with the US Justice Department could also be employed. This was done recently in New Jersey due to racial profiling by the State police.

In order to allay the court's fear of a flood of copycat cases without merit, Petitioner submits criteria that can be used to distinguish worthy cases. (All are present in the within matter) The use of these actions coupled with a willingness by the high court circuit judge or district judge to intervene as above will serve to reduce, rather than increase, the number of appeals. Through public pressure it will lead to elections and other needed judicial reforms in offending states.

1. Decisions which are unjust on their face and repugnant to the interests of justice such as having to pay to store someone else's car for three years when they caused the problem, denying of a hearing and standing pre-discovery to have zoning laws enforced within 200 feet of one's property, and refusing to decide costs according to current statutes.

2. Motions for reconsideration and appeals taken
3. No substantive day in court. No findings or adjudication on the actual issues complained of and failure to uniformly apply laws despite many motions for reconsideration made and the laws placed conveniently before the courts.
4. Denial of Access purposeful, not in error.
As found in petitioner's verified complaint;
As all three courts had these and other "errors" brought to their attention and refused to remedy them though having the laws conveniently placed before them, and obviously knowing that not remedied they would deprive Asarnow of his substantive rights, they can no longer be considered just error. The rubber stamping of the decision by the higher courts upon "review" while appearing procedurally to afford due process, further denies actual procedural (fair, impartial) or substantive due process on these same key issues affecting within Plaintiff's substantive rights. Had the conclusions of the trial court and failure to apply the proper laws been in error, surely these two higher courts would have corrected this. That they are satisfied that there is no error at the end of the State process indicates their own willful assent to the arbitrary, unconscionable deprivation of Plaintiff Asarnow's substantive rights.
5. No other remedy available –exhaustion of remedies.
6. No jury – As long as a jury is instructed properly by the court, and its decision is not against the hard evidence,
a jury decision should be final and this action cannot be used.
7. No popular non-partisan elections for judges present.
8. Hard evidence of record ignored in favor of credibility and other subjective standards. This can easily be abused and lead to arbitrary and corrupt decisions which are unlikely to be disturbed by the upper courts who are also not accountable.
9. Pattern of disregard for individual rights as displayed in more than one matter involving petitioner or others.

II. The Statute of Limitations and Accrual period in these particular matters is unsettled and should be resolved to prevent further denial of justice.

Plaintiff maintains that these matters may not always be due to a discrete, apparent act, such as in personal injury, and that time is also needed to determine whether a pattern exists and to prosecute appeals. Without at least one appeal, it is impossible to know, immediately upon judgment/dismissal, whether the failure of due process is one of appealable error made in good faith and correctable on appeal, or one due to intentional wrongdoing and denial of court access. The statute of limitation and accrual periods needs to take account of this, as it does in Bivens matters for malicious prosecution where the final act/judgment, not the earliest, is used as the onset of the accrual period. "While state Law supplies the limitations period where no stated federal statute of limitations exists, federal law determines when the period commences" *Kronfeld v. First Jersey Nat. Bank, 638 F. Supp. 1454, 1474* (DC NJ 1986) As evident in *Ruff v. Runyon*, 258 F3d 498, 500 (6th Cir. DC 2001) "Under federal law the statute begins to run when plaintiffs knew or should have known of the injury which forms the basis of their claims", *Friedman v. Estate of Presser*, 929 F2d 1151, 1159 (6th cir. 1991) citing *Sevier v. Turner*, 742 F2d 262, 273 (6th Cir. 1984) "This inquiry focuses on the harm incurred rather than the underlying facts which giver rise to the harm." Quoting *Shannon v. Recording Indus. Assn. of Amer.*, 661 F.Supp 205, 210 (S.D. Ohio 1987)"A plaintiff has reason to know of his injury when he should have discovered it through the exercise of reasonable diligence." *Sevier* at 273. The trial court's findings are in agreement with this, however, Petitioner is injured and discovers his constitutional injury only later, after the State appeal process is exhausted (Jan. 31, 2000 - Car Appeal denied, May 2, 2000 – certification denied) and he has to turn over the funds (8/25/00). "A cause of action grounded in tort accrues, not when the tortuous act occurs, but when the consequential injury or the damage occurs."

Hermes v. Staiano, 437 A2.d 925, 927 (Superior Court NJ 1981) N.J. 181 N.J. Super 424 Furthermore, in the within matter, the medical/psychological/emotional symptoms and distress did not occur until after decisions in both matters and is not the focus of the entire complaint as the trial court alleges. To expect that upon judgment in the car matter that all damages suddenly accrued for both matters is unreasonable and denies justice, especially since, the deprivations may be viewed as continuing and the accrual period may not have even begun. "Courts will not set aside statute of limitations unless time allowed is manifestly so insufficient that statute becomes a denial of justice" *Housing Authority of Union County v. Commonwealth Trust Co.*, 136 A.2d 401, 408 (NJ Supreme Ct. 1957) 25 NJ 330. indicating that Statutes of Limitations are not to deny justice. Petitioner respectfully suggests that in these matters, accrual begin upon the final order in <u>each particular matter</u> and that borrowing a state's personal injury statute is reasonable for determining the statute of limitations. This would hold as long as the abuse is not ongoing and continuous. **Nevertheless, the record shows, the court does not dispute that the within claim is allowable so this should not be an issue for this court as to the instant matter**.

III. The accrual applied in this matter denies justice. The court errs in dismissing the entire matter.

Though setting forth the correct standards of review, the court begins by finding a) the cause of action is allowable and may exist (4/10/03 T5-25) but could not be inferred/discerned from the facts of the complaint (4/10/03 T5-15) b) no constitutional claim existed since no person was named under 1983 (4/10/03 T7-13) c) the entire complaint is a personal injury matter subject to Tort Claims Act and ascribes a time of accrual intended in those matters, not the matter at hand (4/10/03 8-9, 9-19).

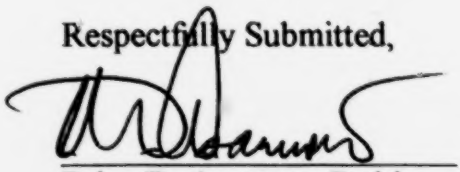
The First Count of the original complaint should have survived dismissal and is subject to amendment. Alternate causes of action are allowed and encouraged. (R. 4:5-2, 4:5-6), The First Count contains no reference whatsoever to the Tort Claims Act and any damages sought clearly stem as consequence of the constitutional tort. *Bell v. Hood*, 327 US 678, 681 (1946), holds "it is clear that petitioners seeks recovery squarely on the ground that respondents violated the Fourth and Fifth Amendments"...It cannot be doubted therefore that it was the pleader's purpose to make violation of these constitutional provisions the basis of his suit and further the party who brings a suit is master to decide what law he will rely upon" citing *The Fair v. Kohler Die Co.*, 228 US 22, 411 (1913).

The Court recognizes and reaffirms (10/24/03 Tr.5-25) that the original Complaint contains two matters yet in error ascribes the same accrual date to the second matter involving Long Branch in order to dismiss both matters. The second matter and the decision on costs could have each been brought separately with their own accrual dates and were included together under the entire controversy doctrine. Using the trial courts reasoning, the Long Branch matter accrued on January 5, 2001 when the voluntary withdrawal and final order was entered so an appeal could be had. Petitioner would have had to sue by January 5, 2003. The order on costs was entered on 8/29/03. The within verified complaint was filed 8/26/02, so Petitioner is well within the time to sue for these. For reasons stated above, the court's method of imputing accrual is faulty and all three issues involving the two matters should not have been dismissed.

CONCLUSION

The petition for writ of certiorari should be granted in the interests of justice to provide a remedy for these matters and to deter corruption in state courts and agencies.

Respectfully Submitted,



Brian D. Asarnow, Petitioner

Date: June 13, 2005

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2610-03T3

BRIAN D. ASARNOW,

Plaintiff-Appellant,

v.

SUPERIOR COURT OF NEW JERSEY,
STATE OF NEW JERSEY,

Defendant-Respondent.

Submitted December 7, 2004 – Decided DEC 27 2004

Before Judges Collester and Parillo.
On appeal from the Superior Court of New Jersey,
Law Division, Mercer County,
Docket No. MER-L-2798-02

Brian D. Asarnow, pro se appellant.

Peter C. Harvey, Attorney General of New Jersey,
attorney for respondent (Michael A. Haas, Assistant
Attorney General, of counsel; Edward H. Haas, Deputy
Attorney General, on the brief).

PER CURIAM

Plaintiff, Brian D. Asarnow, appeals from an order of the Law Division dismissing his complaint against defendants,

APPENDIX A

State of New Jersey and the Superior Court of New Jersey. In two counts, plaintiff's complaint alleged that the State defendants deliberately wronged him by issuing adverse rulings in two civil lawsuits in which he was a party. Plaintiff asserted state and federal bases for his cause of action, including negligence pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 59:12-3; denial of his Fourteenth Amendment right to due process, pursuant to 42 U.S.C.A. S 1983; and direct claims under both the New Jersey and Federal Constitutions. On defendants' motion pursuant to Rule 4:6-2(e), the judge dismissed the complaint for failure to file a timely notice of claim, N.J.S.A. 59;8-8, 8-9; failure to file within the governing two-year statute of limitations, N.J.S.A. 2A:14-2; and failure to state a cause of action for which relief could be granted, N.J.S.A. 59:2-3; Harris v. Champion, 51 F.3d 901, 905-06 (10th Cir. 1995). We affirm substantially for the reasons set forth in the April 10, 2003, oral opinion of Judge Sapp-Peterson, and in the judge's subsequent oral decisions of July 18, 2003, October 24, 2003, and February 27, 2004, denying plaintiff's serial motions for reconsideration.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION

DONALD F. PHELAN
CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
RECEIVED AND FILED

APR 10 2003

JUDE DEL PRECORE
DEPUTY CLERK OF SUPERIOR COURT

BRIAN D. ASARNOW,

Plaintiff,

v.

STATE OF NEW JERSEY, SUPERIOR COURT OF NEW JERSEY,

Defendants

SUPERIOR COURT OF NJ
LAW DIV.-MERCER COUNTY
DOCKET; MER-L-2798-02

Civil Action
ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE

THIS MATTER, having been brought before the Court by David Sampson, Attorney General of New Jersey (Beth C. Rogers, Deputy Attorney General appearing), attorney for Defendants State of New Jersey, and the Superior Court of New Jersey, for an Order dismissing the Complaint with prejudice, and the Court having read and considered the papers in support and in opposition thereto, and good cause having been shown;

IT IS ORDERED on this 10 day of April, 2003 that Defendant's motion to dismiss the Complaint with prejudice is hereby GRANTED; and

IT IS FURTHER ORDERED, that a copy of the within Order be served upon all interested parties within 7 Days of the date hereof.

HON.

PAULETTE SAPP-PETERSON, P.J.Cv.

APPENDIX B

The reasons for this order have been set forth on the record by the court.

7/18/03

DONALD F. PHELAN
CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
RECEIVED AND FILED

AUG 8 2003

BRIAN D. ASARNOW,

Plaintiff,

v.

STATE OF NEW JERSEY, SUPERIOR COURT OF NEW JERSEY,

Defendants

SUPERIOR COURT OF NJ
LAW DIV.-MERCER COUNTY
DOCKET; MER-L-2798-02

Civil Action

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR TO AMEND COMPLAINT

THIS MATTER, having been brought before the Court by plaintiff Brian Asarnow, pro se, for an Order to reconsider the Court Order dated April 10, 2003 dismissing the complaint with prejudice, and /or for an Order to Amend Plaintiff's Complaint; and Peter C. Harvey, Attorney General of New Jersey (Beth C. Rogers, Deputy Attorney General appearing), attorney for Defendants State of New Jersey, and the Superior Court of New Jersey, having submitted opposition thereto; and the Court having read and considered the papers in support and in opposition thereto, and the

YOU MUST FORWARD A COPY OF THIS ORDER TO ALL ATTORNEYS AND/OR PRO SE PARTIES WITHIN 5 DAYS OF RECEIPT

Court having heard and considered oral argument in support and in opposition thereto, and good cause having been shown;

IT IS ORDERED on this 8th day of Aug., 2003 that Plaintiff's motion for reconsideration of the Court's April 10, 2003 Order is hereby DENIED; and

IT IS FURTHER ORDERED, that plaintiff's motion to amend the complaint is hereby DENIED; and

IT IS FURTHER ORDERED, that a copy of the within Order be served upon all interested parties within 7 Days of the date hereof.

Paulette Sapp-Peterson, P.J.Cv.

THIS ORDER PREPARED
AND FILED BY COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. L-2198-02

ASARNOW
PLAINTIFF(S)

VS.

ORDER

STATE OF NJ
DEFENDANT(S)

DONALD F. PHELAN
CLERK OF SUPERIOR COURT
SUPERIOR COURT OF N.J.
MERCER COUNTY
RECEIVED AND FILED

OCT 24 2003

The reasons for this order
[illegible] set forth on the
record [illegible] Court.

10/24/03

JUDE DEL PRIORE
DEPUTY CLERK OF SUPERIOR COURT

The above matter having been scheduled for MOTION on October 24, 2003,
It is on this 24th day of October 2003 ORDERED that the motion for reconsideration of this Court's Orders of April 10, 2003 and August 8, 2003 is denied

YOU MUST FORWARD A COPY OF THIS ORDER TO ALL ATTORNEYS AND/OR PRO SE PARTIES WITHIN 5 DAYS OF RECEIPT

Paulette M Sapp-Peterson

PAULETTE SAPP-PETERSON, P.J.Cv. J.S.C.

The ... have ... rece... 2/27/04

... COURT OF N.J. ... COUNTY ... AND FILED

FEB 27 2004

BRIAN D. ASARNOW,
Plaintiff,

vs.

STATE OF NEW JERSEY, SUPERIOR COURT OF NEW JERSEY,

Defendants,

SUPERIOR COURT OF NJ
LAW DIVISION
MERCER COUNTY

Docket No. MER. L-2798-02

Civil Action

FINAL ORDER

THIS MATTER, having been brought before the Court by Plaintiff Brian Asarnow, upon a third/final motion To alter or amend previous Orders and to amend complaint, and the Court having read and considered the papers in support and opposition thereto and oral argument, and good cause having been shown;

IT IS ORDERED on this 9th day of January, 2004 that Plaintiff's motion to alter/amend this Court's Orders of April 10, 2003, July 18, 2003 and October 24, 2003 is DENIED; and IT IS FURTHER ORDERED, that this Order be and is hereby final; and
IT IS FURTHER ORDERED a copy of the within Order be served upon all interested parties within 7 days of the date hereof.

Hon. Paulette Sapp-Peterson, P.J. Cv.

SUPREME COURT OF NEW JERSEY
C-750 September Term 2004
57, 372

BRIAN D. ASARNOW,

Plaintiff-Petitioner,

v.

STATE OF NEW JERSEY, SUPERIOR COURT OF NEW JERSEY,

Defendant-Respondent,

ON PETITION FOR CERTIFICATION

FILED
MAR 16 2005
CLERK

To the Appellate Division, Superior Court

A petition for certification of the judgment in A-2610-03 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 14th day of March, 2005.

CLERK OF THE SUPREME COURT

APPENDIX C

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY, NEW JERSEY
DOCKET NO. MER-L-2798-02
A.D. #_____

BRIAN D. ASARNOW	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	OF
-v-	)	DECISION
	)	
STATE OF NEW JERSEY	)	
et al.,	)	
	)	
Defendants.	)	

Place: Mercer County Courthouse
175 South Broad Street
Trenton, NJ 08650

Date: April 10, 2003

BEFORE:

HON. PAULETTE SAPP-PETERSON, P.J.Cv.

TRANSCRIPT ORDERED BY:

BRIAN D. ASARNOW
55 Community Place,
Long Branch, NJ 07740

APPENDIX D

Transcriber, Patricia C. Repko
J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, NJ 08619
(609)586-2311
FAX NO. (609)587-3599
E-mail: jjcourt@optonline.net

Audio Recorded

THE COURT: This is docket number L-2798-02, Asarnow versus the State of New Jersey. On August 26th, 2002 pro se plaintiff Brian Asarnow filed a two-count complaint alleging that the State and its judiciary violated his procedural and substantive due process rights by allowing its courts and judges to engage in arbitrary and invidious discrimination against him.

Plaintiff alleges in the first count of his complaint that he gave the tort claims notice on November the 20th, 2000. Plaintiff's complaint focuses on two legal cases that went against him and alleges a variety of non-specific allegations against the State and its judiciary.

On or about October 21st, 2002 plaintiff served the New Jersey court defendants with a complaint. The initial action in which plaintiff alleges the courts deliberately wronged him, Schneider vs. Asarnow, docket number L-MON -- Monmouth docket L-2377-96, involved a replevin of a car plaintiff stored in a garage. Plaintiff regards the order to turn over funds deposited with the Court to the plaintiff Schneider issued on October 25th, 2000 as the date in which he got notice of his damage by the State and its judiciary, thus, Mr. Asarnow regards his tort claims notice to the Attorney General on November 20th, 2000 as in compliance with N.J.S.A. 59:8-8. The order commanded that the sum of $6,354.39 be turned over to the plaintiff's attorney pursuant to a supersedeas bond.

The second complaint, Asarnow versus City of Long Branch, docket number L -- Monmouth L-5080-98, apparently involved zoning and land use with commercial property owned by plaintiff in Long Branch, New Jersey. Plaintiff contends in count one of its complaint that the defendants willfully, invidiously, unconscionably deprived plaintiff of his rights under the seventh and 14th amendments

of the United States Constitution and Article One, Sections One, 9, and 21 of the New Jersey Constitution.

In count two of his complaint plaintiff alleges the defendants were negligent under the tort claims act and failing to prevent constitutional, mental, and physical torts. Plaintiff complains that the rulings by the judiciary against him have caused the onset of his diabetes and depression.

The State of New Jersey defendants filed the present motion to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted, pursuant to Rule 4:6-2(e). The defendants contend that plaintiff's complaint must be dismissed as it fails to set forth a cause of action upon which relief can be granted. Plaintiff's complaint must be dismissed for failure to file a timely notice of claim pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. Plaintiff has failed to state a constitutional claim upon which relief can be granted, and plaintiff's complaint should be dismissed for impropriety of pleading under Rule 4:6-4(b).

In opposing this motion plaintiff contends that the cause of action of both counts under the cited statutes in conjunction with federal and state constitutions sets forth a cause of action, that plaintiff properly served the tort notice, that plaintiff has stated a constitutional claim upon which relief could be granted, and that plaintiff's pleadings are not improper and do not -- and do meet the test -- and that, therefore, do meet the test to survive dismissal pursuant to Rule 4:6-4(b).

The standard under which motions to dismiss are decided is well established in New Jersey. F.G. vs. McDonald 291 New Jersey Super 262. Trial courts should approach with great caution applications for dismissal based on the failure of the complaint to state a claim under Rule 4:6-2(e) on which relief may be granted. The test for determining adequacy of pleading is whether a cause of action is suggested by the facts. The inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. For purpose of the analysis, plaintiffs are entitled to have the complaint searched in depth and with great liberality to determine if a cause of action can be gleaned even from the obscure statement, particularly if further discovery is taken. Printing Mart vs. Sharp Electronics 116 New Jersey 739.

Therefore, every reasonable inference will be given to the plaintiff, and the motion will only be granted in the rare instances and generally without prejudice.

The defendants argue that plaintiff's admission is vague and unintelligible and fails to set forth any factual basis to support a claim for relief against the New Jersey defendants -- State defendants. According to defendant, plaintiff's complaint really provides a confused ramble of grievances associated with the two cases plaintiff lost in Monmouth County Superior Court.

The Court has read the complaint and also finds it difficult to infer a cause of action from the two counts of the complaint. Plaintiff is correct that New Jersey has wage immunity for some causes of action under N.J.S.A. 59:1-1 and under N.J.S.A. 52:4A-1. However, plaintiff must still plead a discernable cause of action. In an earlier decision the Court of Errors and Appeals recognized the need to put the judge behind the reach of every malignant or disappointed suitor. It was said in Grow vs. VanDine that such is the case.

In Cashman vs. Phantom 125 New Jersey Super the Appellate Division quoted approvingly from Grow vs. VanDine. "A judge is not similarly liable for actions which are at least colorably within his jurisdiction." Although no judges were specifically sued by plaintiff on the principles articulated in Grow vs. VanDine is persuasive, although plaintiff's chief right is that the judiciary went the wrong way in the decisions in his two cases and subsequent appeals.

Judges by implication through the judiciary are immune from suits on the mere ground that the suit went against a party. Thus, plaintiff's suit against the Superior Court of New Jersey is without merit.

To be fair to plaintiff, Houlian vs. Allen at 466 U.S. 522 permits stay judges to be the subject of p potential -- the subject of injunctive relief and counsel fees. Defendant argues that to the extent that plaintiff's complaint could be read to allude to a violation of his constitutional rights, such claims must be dismissed, because plaintiff has failed to name a person as required by statute. Nonetheless, even pursuant to N.J. -- I'm sorry -- pursuant to Section 1983, the State of New Jersey is not a person within the meaning of Section 1983. See Wills vs. Michigan Department of State Police 491 U.S. 58.

Additionally, the State contends the New Jersey courts have held that neither the State nor its alter ego is a person for purposes of Section 1983. See Delbridge vs. Schaeffer 238 New Jersey Super 323, citing from Fuchilla vs. Layman at 109 New Jersey 319.

Defendants conclude that because the plaintiff's complaint names the State of New Jersey and the Superior Court of New Jersey as the only defendants, the complaint fails to name a person as required by Section 1983.

Plaintiff in point three of his opposition brief states this is not a 1983 action and pleads directly upon the New Jersey and Federal Constitutions, thus, plaintiff in effect concedes that there is no Section 1983 action in this case. Moreover, the Court notes that plaintiff only makes a short comment in quotes above as a response. It is the defendant's contention that the argument that he has no constitutional claims.

Although the plaintiff contends that he proceeding directly under New Jersey and the Federal Constitution, plaintiff does not provide the Court with any indication of what cause of action he is alleging. Plaintiff contends that his injury occurred on August 25th, 2000 when the Court ordered the money held by the Court to be disbursed to plaintiff's counsel.

Defendants argue that plaintiff had notice of the injury when the judgment was filed against him on or about July 9th, 1998. The Supreme Court in Beauchamp vs. Amideo set forth the analysis of the accrual date for actions brought pursuant to the tort claims act.

Generally, the case of tortious conduct resulting in injury, the date of accrual will be the date of the incident on which the negligent act occurred. The question out of Beauchamp becomes when did Asarnow have notice that he was allegedly wronged by the judiciary. Plaintiff places accrual at the last possible moment when the Court disbursed the funds that it held, however, a reasonable interpretation of the facts in that case would indicate that the day of judgment is a more reasonable date of when the cause of action accrued. Plaintiff knew when the Court ruled against him that he was harmed by the ruling. The disbursement of the funds held in court may well be the final act. That is not where the courts focus their attention. Accrual of an action for emotional distress arising out of

termination of parental rights is a date of termination not the date of final appeal. Americado vs. State 219 New Jersey 487.

Plaintiff appealed the Schneider decision. Plaintiff complains of emotional distress from the rulings against him. He claims that these caused the onset of his depression and diabetes. Thus, the term of plaintiff's 90-day accrual period under the Tort Claims Act is not on November 26, 2000, rather, the final date to file a notice of tort claim was the date of judgment, October 9th, 1998.

(Tape off)

THE COURT: Strike that. The date on which plaintiff's cause of action accrued for purposes of the Tort Claims Act was October 9th, 1998. The Court notes in passing that plaintiff has not established a tort claim by claiming that an adverse ruling by the judiciary is an act of negligence. The facts recited by plaintiff do not sound of negligence nor do the facts pointed to by plaintiff indicate an intentional tort.

Finally, defendants argue that plaintiff's pleadings should be dismissed, because plaintiff's pleadings are impertinent and an abuse of the Court's time and resources. On the courts' or a parties' motion the Court may either dismiss any pleading that is overall scandalous, impertinent, or considering the nature of the cause of action abusive of the court or another person. Although plaintiff's complaint contains unflattering things about the judiciary's decisions and reasoning, it is not vulgar or done in an inflammatory fashion.

Defendants contend that plaintiff's pleadings are impertinent and an abuse of the court's time, but it is not clear that the pleadings are irrelevant. If plaintiff -- although plaintiff -- the fact that plaintiff does not have a cause of action does not render the pleadings abusive or impertinent, and so the extent that the defendants would seek relief on that basis, that is denied.

However, the Court is satisfied that the plaintiff has in all respects otherwise failed to state a claim upon which relief may be granted, and accordingly, the motion is granted.

* * * * *

CERTIFICATION

I, PATRICIA C. REPKO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number CI106-03-PSP, index number 1725 to 2513, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

_____ Date: _____

PATRICIA C. REPKO AOC #432
J&J COURT TRANSCRIBERS, INC.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY, NEW JERSEY
DOCKET NO. MER-L-2798-02
A.D. #_____

BRIAN D. ASARNOW	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	OF
-v-	)	DECISION
	)	
STATE OF NEW JERSEY	)	
et al.,	)	
	)	
Defendants.	)	

Place: Mercer County Courthouse
175 South Broad Street
Trenton, NJ 08650

Date: July 18, 2003

BEFORE:

HON. PAULETTE SAPP-PETERSON, P.J.Cv.

TRANSCRIPT ORDERED BY:

BRIAN D. ASARNOW, Pro Se
55 Community Place,
Long Branch, NJ 07740

APPEARANCES:

BRIAN ASARNOW, Pro Se

BETH ROGERS, Deputy Attorney General
Attorney for the Defendants

Transcriber, Gina M. Cermak
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Audio Recorded

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THE COURT: This is a motion for reconsideration, Docket Number L-2798-02. It=s a motion for reconsideration of this Court=s dismissal and its dismissal of the complaint with prejudice. May I have your appearance, please?

MR. ASARNOW: Good morning, Your Honor. My name is Brian Asarnow. I=m the plaintiff.

THE COURT: Thank you. Good morning.

MS. ROGERS: Good morning, Your Honor. Beth Rogers from the Attorney General=s Office on behalf of the State and the judiciary defendants.

THE COURT: Good morning. Mr. Asarnow?

MR. ASARNOW: Yes, Judge. A motion for reconsideration was filed, as well as a motion to amend the complaint. I believe the Court respectfully did err in their initial dismissal, particularly in the aspect of being with prejudice. The standard of review is pretty clear, set by the New Jersey Supreme Court for dismissals of -- based on initial pleadings that it=s to be very rare. All facts are to be construed in the most favorable light to the pleader. And with leave to amend the complaint thereof. And I have redone the complaint, which I think is a little less conclusory and more factual. And the Court did agree that the cause of action may exist there, but just that it could not infer the -- infer from the facts and from other criteria that the Court and the State interposed there, which go beyond the standard. That it just couldn=t -- couldn=t infer the cause. But, you know, as I said, I believe the Court has found that the cause is allowable. And, you know, the standard of review is factual. It=s based on the facts only, not from any other issues brought outside of the standard of review.

So, bearing that in mind, and bearing in mind the amended complaint that has been submitted, I believe the motion for reconsideration should be granted. I guess it is since we=re here today arguing it, which I appreciate. And I believe, you know, the Court should reverse itself on that initial finding.

THE COURT: Thank you. Ms. Rogers?

MS. ROGERS: Your Honor, plaintiff=s amended complaint is as defective as his initial complaint. Your Honor properly dismissed plaintiff=s initial complaint. He -- Mr. Asarnow has presented no new facts or law, nor shown that the Court was arbitrary and capricious in its decision. Plaintiff=s complaint is basically a confused rambling of grievances, as well as his amended complaint, based on two prior litigations in which Mr. Asarnow was unsuccessful. It=s well established that an unsuccessful litigant does not have the right thereafter to -- there=s

judicial immunity and whatnot thereafter to come to the Court and sue based on due process rights.

Mr. Asarnow=s relief would have been to the Appellate Division -- recourse would have been to the Appellate Division or to the Supreme Court. He did appeal one of the matters and that went up to the Supreme Court. And the Supreme Court affirmed the lower court=s decision. Mr. Asarnow, also in his amended complaint, fails to establish that he filed a proper notice of tort claim.

Finally, Mr. Asarnow=s amended -- proposed amended complaint fails to name a person as required under Section 1983. If, in fact, his complaint can be read to allege any constitutional claims, which I could not really get out of it. So I believe that the Court properly dismissed the initial complaint. And the amended complaint is as defective as the initial complaint.

THE COURT: Well, even if he named the State of New Jersey in the amended complaint in connection with the 1983 action he=d be back here anyway --

MS. ROGERS: Correct.

THE COURT: -- asking that that be dismissed because you cannot bring a cause of action against the State of New Jersey --

MS. ROGERS: Exactly.

THE COURT: -- under 1983.

MS. ROGERS: Yes, Your Honor.

THE COURT: All right. Anything further, Mr. Asarnow?

MR. ASARNOW: Well, I=ll respond quickly, Your Honor.

THE COURT: Go ahead.

MR. ASARNOW: I mean, the papers, I believe, speak for themselves. This whole issue is about denial of meaningful access to the courts in the first instance in my other earlier matters, okay? It=s not about -- and that was responsible for the, I believe, unlawful decisions of those courts, okay? Not the fact that I=m not happy with those decisions. The fact that they were made due to a denial of due process. A denial of meaningful access to the courts, okay, is what this is about here. So that=s the basis of this

complaint here. And I believe the facts -- the Court should be able to find at least one set of facts in this amended complaint here to support my argument here. I mean, here I had to pay somebody to store their car for three years. The judge obviously -- he didn=t apply the laws as they should have been applied. Okay? He reverses himself, contradicts himself in that matter numerous times. And that was, you know, passed upon by the appeals division.

I mean, this is what I=m talking about here, denial of meaningful access to the courts. It is a recognized cause of action under the Constitution. I don=t need tort notice for that. The Constitution says nothing about tort notice being required. The 1983 action, you hit it right on. If I were to make it a 1983 action it would be dismissed. So I=m not going to fall into that trap.

I can plead directly from the Constitution as I have done here. And this is a collateral attack, which are allowed. This is not due to my being unhappy with the decision. I believe if the, you know, I was given the due process that I was entitled to these decisions would not -- would have been different, but that is not the cause of the action here. And I just would ask the Court to apply the same standard of review in my matter here as they do to others.

The New Jersey Supreme Court is clear that it=s very rare to dismiss and especially with prejudice. And I ask respectfully that the Court reconsider that.

THE COURT: All right. The motion for reconsideration is not designed to permit a litigant as it were a second bite at the apple. But it is for the Court to consider whether this Court has overlooked matters controlling decisions, or to reconsider that aspect of the decision, or application of the law to which the Court has erred.

In this instance in reviewing the motion for reconsideration and the specific issue of whether or not the matters should have been dismissed with prejudice, whether the cause of action was brought pursuant to the New Jersey Tort Claims Act, or brought under the Constitution, the fact of the matter is that under the New Jersey Tort Claims Act the action is time barred. The plaintiff=s cause of action

accrued in the summer of 1998, July of 1998, and any cause of action against the defendants should have been brought within two years of that date; it was not.

Secondly, there is no federal comparable statute of limitations. And so therefore the federal courts look to state courts for interpreting when a cause of action accrues. And in this instance the underlying facts would support the application of the two year statute of limitations even for a federal cause of action. And so the dismissal with prejudice that the Court rendered previously does not constitute an error in this Court=s judgment and therefore that motion for reconsideration is denied.

Similarly, even with respect the amended complaint, it doesn=t change when the plaintiff=s cause of action accrued. The plaintiff contends that the last time his rights were violated was the ruling against him by the Appellate Division. And so that even with the amended complaint, the fact that the facts may be more tailored doesn=t change the operative date. And for that reason, the Court will deny the application for leave to file an amended complaint. So therefore that motion is denied as well. Thank you.

MR. ASARNOW: May I respond?

THE COURT: I=ve ruled. Is there something that you --

MR. ASARNOW: There is, Your Honor. Strauss v. State (phonetic), which is, you know, the key case here --

THE COURT: If you want to reargue the motion --

MR. ASARNOW: -- there was no tort notice required in Strauss v. State. There=s no tort notice required for the action that I=m proceeding here --

THE COURT: Mr. Asarnow, I recognize that there=s no requirement for a tort notice when you are pleading federal claims. Nonetheless, your cause of action -- the date on which your cause of action accrued, the federal courts look to state courts for determining when the cause of action accrues. And it accrued in 1998. Your complaint is untimely. And therefore the motion to file an amended complaint, even the Court should liberally grant motion to

leave to amend, when they=re -- when it is clear that there is no merit to the cause of action. And in this case, not substantive merit, but jurisdiction merit because of the statute of limitations. That is why the Court is denying the motion. So the Court is not passing on the substantive merits of your claim.

MR. ASARNOW: But I believe the Court is erring by relying on a tort claims notice as far as the statute of limitations.

THE COURT: Okay. I=m not relying on the tort claims notice. One has nothing to do with the other.

MR. ASARNOW: Well, that=s the statute of limitations you=re referring to. I mean, the tort claims notice --

THE COURT: No, Mr. Asarnow, I=m not.

MR. ASARNOW: That=s the way I read you, I=m sorry.

THE COURT: Okay. That=s not what I was relying upon. Causes of action in tort are two years. And the federal courts have nothing to do with the tort claims notice. It looks to state law in determining the statute of limitations. And in this instance it would still be two years even though it=s a federal claim.

* * * * *

CERTIFICATION

I, GINA M. CERMAK, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number CI-188-03-PSP, index number 3640 to 4562, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

_____ Date:

GINA M. CERMAK, AOC #508
J&J COURT TRANSCRIBERS, INC.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY, NEW JERSEY
DOCKET NO. MER-L-2798-02
A.D. #_____

BRIAN D. ASARNOW	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	OF
-v-	)	DECISION
	)	
STATE OF NEW JERSEY	)	
et al.,	)	
	)	
Defendants.	)	

Place: Mercer County Courthouse
175 South Broad Street
Trenton, NJ 08650

Date: October 24, 2003

BEFORE:

HON. PAULETTE SAPP-PETERSON, P.J.Cv.

TRANSCRIPT ORDERED BY:

BRIAN D. ASARNOW, Plaintiff, Pro Se
55 Community Place
Long Branch, NJ 07740)

APPEARANCES;

BRIAN D.ASARNOW. Pro Se
Plaintiff

EDWARD H. HAAS, Deputy Attorney General
ANDREW J. WALKO, Deputy Attorney General
Attorneys for the Defendant

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THE COURT: Thank you. Mr. Asarnow, any response?

MR. ASARNOW: Well, Your Honor, I believe an error still remains. And -- or an overlooking of an aspect of the case still remains despite previous, you know, hearings. So, I believe I am, you know, entitled to address that by another motion for reconsideration. I am in the public interest trying to spare it another appeal and get it resolved here, Your Honor.

THE COURT: ...Plaintiff's complaint focuses on two legal cases that went against him and alleges a variety of non-specific allegations against the State and its judiciary. Plaintiff reasserts that this is not a Section 1983, LAD or personal injury matter and not subject to the two years tort claim statute of limiotations relied upon by the court. The Court=s attempt to rely upon a two year statute of limitation is unreasonable, denies justice and is respectfully in error.

This Court concludes that plaintiff is simply seeking a yet another third bite at the apple. The Court not finding compliance with Rule 4:49-2, substantively the motion for reconsideration is denied. Thank you.

MR. ASARNOW: Thank you, Your Honor.

MR. HAAS: Thank you, Your Honor.

THE COURT: Was there an order submitted? I=m going to need a generic order, okay? Thank you.

* * * * *

CERTIFICATION

I, Nicole Norton, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number 282-03, Index from 1101 to 1913, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

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Nicole Norton #521

J&J COURT TRANSCRIBERS, INC. Date:_____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY, NEW JERSEY
DOCKET NO. MER-L-2798-02
A.D. #_____

BRIAN D. ASARNOW	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	OF
-v-	)	DECISION
	)	
STATE OF NEW JERSEY	)	
et al.,	)	
	)	
Defendants.	)	

Place: Mercer County Courthouse
175 South Broad Street
Trenton, NJ 08650

Date: January 9, 2004

BEFORE:

HON. PAULETTE SAPP-PETERSON, P.J.Cv.

TRANSCRIPT ORDERED BY:

BRIAN D. ASARNOW
55 Community Place
Long Branch, NJ 07740)

APPEARANCES;

BRIAN D.ASARNOW. Pro Se

EDWARD H. HAAS, Deputy Attorney General
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MR. ASARNOW: Good morning, Your Honor. I appreciate your hearing this motion, oral argument. Basically, I think this boils down to there are three issues in this complaint as of this filing here; the matter with the car, okay, which was a first, the oldest, the second issue is the matter with Long Branch involving the property, summary judgment, okay, you know, failure of due process there, Your Honor, and the third matter has to do with the most recent dismissal of costs -- you know, the costs issue, improperly awarding $3,000 in costs, okay.

You boil this down after several visits here to a two year statute of limitations making my entire action, you know, subject to dismissal. Now, the two most recent actions are issues that I just mentioned, fall within the two year statute of limitations, and this was not addressed in the previous visit, so I must raise that issue here, okay. And the other issue here is the statute of

limitations, itself, that you=re using. This is not a personal injury matter. The cases that you have submitted deal with personal injury matters.

The general statute of limitations, if anything, should apply to that matter.

So, I am here, you know, to respectfully ask, you know, the Court to reconsider that. And I have amended the complaint to make it even more clear that this is not a personal injury matter, and I=m asking the Court to reconsider the imposition of this two-year statute of limitation to the within matter. Thank you for your consideration.

THE COURT: Thank you.

Counsel?

MR. HAAS: Good morning, Your Honor. I had some prepared remarks, but first I=d like to briefly respond to what Mr. Asarnow just stated. First of all, we are here, not because of the substance of the two prior complaints. Your Honor

is not being asked to assess the merits of those actions.

Additionally, Mr. Asarnow claims that this is not an issue where -- a case where tort claims notice or the statute of limitations applies. But, in his original complaint Mr. Asarnow continues to ask for damages from the State arising from what he says to be willful, intentional misapplication of constitutional provisions and denial of his rights.

So, by virtue of that, he is seeking damages and costs which require the notice. .

THE COURT: Mr. Asarnow -- thank you -- anything in --

MR. ASARNOW: Well, I can rebut for a minute?

THE COURT: Yes.

MR. ASARNOW: Appreciate it, Judge. I am entitled to civil damages for a violation of my constitutional rights under the U.S. and New

Jersey constitutions; that=s without need for tort claims notice or application of a two-year statute of limitation, which applies in personal injury matters under the New Jersey statutes annotated. I=m entitled to civil damages for these types of matters, and I am seeking that.

I=m not a punching bag for the courts or for the State or for the City of Long Branch. I want my rights. I have property, I pay a lot of taxes, and I don=t like not knowing if I=m going to be getting, you know, my rights over there, it=s costing me money. And I don=t like having to pay somebody to store their car for them when they caused the problem. These are fundamental issues here of people=s rights and the courts have cavalierly, you know, handled this.

And as for the second aspect of his arguments that we=ve been here before, I believe today I=ve given the court things that have been missed regarding two of the three issues in my

complaint not being handled, I believe the two years thing is palpably incorrect reasoning, I think that=s the standard. I think I=m looking for one substantive bite of the apple where all the laws are applied on all issues, and that=s what we=re here for today, Your Honor. Thank you.

THE COURT: All right. Thank you. The motion is denied and I will place my reasons on the record later. Okay. Thank you.

MR. ASARNOW: Your Honor, I have a form of order if I may submit it to the Court?

THE COURT: Yes.

MR. ASARNOW: The adversary has already looked it over and feels it=s proper.

THE COURT: Okay.

MR. ASARNOW: I do have to file my notice of appeal promptly because we=ve used up a lot of time.

THE COURT: I=ll place it on the record. The order will get out by next week, okay?

MR. ASARNOW: Can I wait for the order today and possibly get it because I have to file my notice of appeal within a few days?

THE COURT: You can wait. You can wait but it might be all day, so I am just saying there is no point in waiting because I=m going to place it on the record later on.

MR. ASARNOW: Will you -- the order will be as of today though, when -- in other words it --

THE COURT: The order will be dated as of today.

MR. ASARNOW: Fine.

THE COURT: Okay?

MR. ASARNOW: That=s fine, Your Honor.

* * * * *

CERTIFICATION

I, LEIGH ANNE KING, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number CI 14-04-PSP, index number from 1063 to 1577, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded, to the best of my ability.

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LEIGH ANNE KING

Approved by:

_____ _____

CAROLE RITARDI AOC # 228

J&J COURT TRANSCRIBERS, INC.

DATE:_____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY, NEW JERSEY
DOCKET NO. MER-L-2798-02
A.D. #_____

BRIAN D. ASARNOW	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	OF
-v-	)	DECISION
	)	
STATE OF NEW JERSEY	)	
et al.,	)	
	)	
Defendants.	)	

Place: Mercer County Courthouse
175 South Broad Street
Trenton, NJ 08650

Date: February 27, 2004

BEFORE:

HON. PAULETTE SAPP-PETERSON, P.J.Cv.

TRANSCRIPT ORDERED BY:

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THE COURT: ....State of New Jersey. This is a motion --

(Pause)

THE COURT: -- by the plaintiff for a third and final motion to amend an order and complaint filed on November the 17th seeking reconsideration of this Court=s order of October 24th, 2003. This Court has previously addressed the plaintiff=s efforts at reconsideration during two previous hearings. Suffice it to say that this matter arises out of allegations brought in the two count complaint alleging that the state and its judiciary have violated procedural and substantive process rights by allowing the courts and judges to engage in arbitrary and invidious discrimination. The acts are brought pursuant to both state and federal law.

This Court, on two prior occasions, have denied motions for reconsideration. The Court finding that the dismissal of the action was warranted, number one, because the plaintiff had failed to file requisite notice of claim as to the common law action. And, two, with respect to the allegations brought pursuant to 42 USC Section 1983, the defendant must be a person. And, as a complaint, name the State of New Jersey and the Superior Court of New Jersey as the only defendants, they are not persons within the meaning of 42 USC Section 1983. The Complaint, otherwise, fails to set forth any facts for which a cause of action could be suggested.

For the reasons that this Court has previously articulated and its orders of April 10th, 2003, and July 18th of 2003, the Court finds that there is no merit to the present action similarly for the reasons that the Court placed on the record on October 24th, 2003, this motion must be denied. It does not meet the standards for reconsideration. Thank you. That=s it.

* * * * *

CERTIFICATION

I, DEBRA L. STOREY, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on tape number CI-111-04 PSP, index number 5182 to 5453, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

_____ Date:

DEBRA L. STOREY AOC #494

J&J COURT TRANSCRIBERS, INC.

US CONSTITUTION

ARTICLE V
OF CRIMES AND INDICTMENTS.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject, for the same offense, to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be witness against himself; nor to be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use without just compensation.

ARTICLE VII.
OF TRIAL BY JURY IN CIVIL CASES.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE XIV.
CITIZENS AND THEIR RIGHTS-14th AMENDMENT.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX E

THE CONSTITUTION OF NEW JERSEY

A Constitution agreed upon by the delegates of the people of New Jersey, in Convention, begun at Rutgers University, the State University of New Jersey, in New Brunswick, on the twelfth day of June, and continued to the tenth day of September, in the year of our Lord one thousand nine hundred and forty-seven.

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE I.
RIGHTS AND PRIVILEGES.

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

9. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons when the matter in dispute does not exceed fifty dollars. The Legislature may provide that in any civil cause a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury.

21. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people

(Excerpt from Original Verified Complaint)

BRIAN D. ASARNOW
55 Community Place
Long Branch, NJ 07740
732-870-2570
Pro Se Plaintiff

BRIAN D. ASARNOW,

Plaintiff,

SUPERIOR COURT OF NEW JERSEY,
LAW DIVISION
MERCER COUNTY

vs.

Docket No. MER-L- 2798-02

STATE OF NEW JERSEY,
SUPERIOR COURT OF NEW JERSEY,

Civil Action:

Defendants,

VERIFIED COMPLANT

Plaintiff, Brian Asarnow, New Jersey resident and owner in fee of and doing business at those premises commonly known as 55 Community Place, referenced on the Municipal Tax Map as Block 237 Lot 22, in the City of Long Branch, County of Monmouth and State of New Jersey, by way of Verified Complaint against the defendants herein, says:

FIRST COUNT

1. In two matters heard without jury before the New Jersey Superior Court originating in the Monmouth vicinage, Plaintiff alleges the courts **knowingly engaged in arbitrary and invidious discrimination in the denial of Plaintiff's**

APPENDIX F

procedural and substantive due process and equal protection rights relating to the above commercial property, and that this has caused and continues to cause damage to Plaintiff. Such rights are guaranteed to US citizens under the due process/equal protection clause of the 14th Amendment to the US Constitution and reaffirmed in New Jersey's own Consitution as set forth below. As stated in Plaintiff's Tort Notice served November 20, 2000, Plaintiff alleges the reasons for this are from neglect of duty on the part of the State in allowing its courts and judges to deliberately and recklessly engage in said deprivations with impunity as regards claimant, and on information and belief, others similarly situated and aggrieved, due to personal, political or other reasons. ..

In the first matter, the court, upon a 2.5 month deliberation during which time within Plaintiff alleges influence may have been exerted, contrived to find that within Plaintiff was obligated to pay someone to store their car for them for three years though the court would not find who was actually at fault for causing the incident or why. On July 9, 1998 following a bench trial in a "replevin" matter known as Schneider v. Asarnow, Docket MON L-2377-96, involving within Plaintiff's storing of plaintiff's automobile for him, (Exhibit A) judgment was entered against within Plaintiff in the amount of $5,000 compensatory damages plus interest and costs of suit alleging deterioration and depreciation of a stored automobile as the reason.. Within Plaintiff counterclaimed for his storage fees and just compensation (quantum meriut) which was denied. An Appeal was filed and rubber stamped/ upheld this decision (Exhibit B) and a Petition for Certification with the NJ Supreme Court was then filed and which was denied

None of this made the slightest sense since all the hard evidence produced at trial clearly demonstrates plaintiff's knowledge of the closing taking place on the

building which he formerly owned and which within Plaintiff acquired in foreclosure and in which he continues to run his businesses, yet refusal to remove his one remaining vehicle or pay any storage fees.

This hard evidence consists of plaintiff Schneider's own admissions (Exhibit D) , and receipt by his live-in housekeeper/agent, whom within Plaintiff testified he had previously met at plaintiff Schneider's residence and which was not refuted by Schneider, of two certified letters which he chose to ignore, informing him of the need to remove by closing or that fees would incur and a lien on the vehicle be sought for payment thereafter (as allowed under the garagekeepers act). The trial judge brushed aside this hard evidence and its implications as to an implied agreement and focused only on whether any oral agreement existed for storage since he knew this nontangible is immune from further review. Instead, he seemed content to believe plaintiff's assertion that he did not see either letter until reading them at trial despite the fact that they were given to his attorney during discovery a year and a half prior and referred to by plaintiff in one of his handwritten notes. This would seem to be fraud and theft of services yet the court refused to take judicial notice of this or the constructive notice given to Schneider and his assent thereto. As the record shows plaintiff was given ample access to remove his vehicle around the closing, and the trial Court found he didn't make clear unambiguous demand until nine months later , after already receiving benefit and thereby signifying his assent, and found he suffered no loss of use or sale and therefore wasn't about to use the vehicle found to be inoperable and which he had stored previously for many years in the exact same building, and found further that "plaintiff did not have any right to leave the vehicle on the defendant's property free of charge", the decision not to award within Plaintiff any compensation seemed unfair, to say the least, and violates the doctrine of quantum meriut, a substantive right.

That Plaintiff should have to pay someone for the privilege of storing their vehicle for them for three years seems totally absurd and unjust. That the Appellate Div. and NJ Supreme Court should rubber stamp all this shocks the conscience and has deprived within Plaintiff of his aforementioned rights and property (income) without due process.

Also, though the commercial building was formerly an auto body shop and contains garages and within plaintiff submitted a myriad of evidence showing how he performed as garage keeper, the trial court held that he was not entitled to be a garage-keeper and attempted to support this position by citing two cases which had no relevance.

Petitioner believes the above result was not ultimately due to errors or omissions committed by the three courts but by the willful, intentional disregard of his substantive rights including the right to a full, fair, disinterested disposition that equally considers and applies all relevant laws.

All three courts had before them the same arguments, errors and omissions pointed out by Asarnow.
All three courts had the same relevant doctrines, case-law, and precedents submitted by Asarnow in addition to the hard evidence of record. The trial judge, in the motion for reconsideration acknowledges Asarnow raising the doctrines of equitable estoppel as to who is the wrongdoer, laches as to timely demand, avoidable consequences, lack of any proximate damages, and implied assent, (no mention is made of quantum meriut or just compensation) yet refuses to properly apply them which would result in an entirely different outcome. He seeks to avoid liability for plaintiff Schneider, a millionaire, under quantum meriut by alleging that he earlier appeared to take his vehicle and wasn't given it thus contradicting the court's own earlier finding that clear unambiguous demand was not made for nine months thus

disbelieving Schneider's story of an alleged earlier attempt. This was not the only contradiction made by the trial court of its own earlier findings in attempting to support its decision. As stated earlier, though finding "plaintiff did not have any right to leave the vehicle on the defendant's property free of charge" it failed, nevertheless, to hold Plaintiff Schneider accountable for any storage fees or for any losses as a consequence of his own action and refused to award any compensation to within Plaintiff. Despite the Court's resistance and refusal to accept testimony related to the CPI manual, the only means available at hand to attempt to place a value on the vehicle in question, nevertheless the Court, in its decision, decides to use the CPI value of $13,00 for a vehicle in fair condition and nevertheless misapplies this since the vehicle at hand was in less than fair condition and not drivable by all accounts and testimony.

As all three courts had these and other "errors" brought to their attention and refused to remedy them though having the laws conveniently placed before them, and obviously knowing that unremedied they would deprive Asarnow of his substantive rights, they can no longer be considered just error. The rubber stamping of the decision by the higher courts upon "review" while appearing procedurally to afford due process, further denies actual procedural (fair, impartial) or substantive due process on these same key issues affecting within Plaintiff's substantive rights. Had the conclusions of the trial court and failure to apply the proper laws been in error, surely these two higher courts would have corrected this. That they are satisfied that there is no error at the end of the State process indicates their own willful assent to the arbitrary, unconscionable deprivation of Plaintiff Asarnow's substantive rights.

As stated in Plaintiff's Tort claims Notice, when Plaintiff attempted to make the Administrative Office of the Courts of NJ (AOC) aware of the players and reasons for this treatment

by the lower and Appeals Court, he was rebuffed and told he would have to do his own investigation and given an example by Mr. Monahan of AOC's Advisory Committee on Judicial Conduct of a prisoner who had hanged himself due to an unjust decision by a trial judge, and that only in that type of instance would the AOC get off their chairs and investigate. Mr. Monahan also referred to an individual whom claimant alleges is an intermediary in the interference with some of his rights and who has unrestricted access to the judges under guise as county bar association president, by his nickname indicating the fruitlessness of this approach and likelihood that the individual has since been told about this. Furthermore as claimant is unaware of any steps taken by the Attorney General's office to prosecute Plaintiff Schneider for the obvious fraud perpetrated upon the Court to attain his judgment, with the court's apparent assent, since bring brought to the Court's and later DAG Derry's attention (Federal Amended Complaint), this indicates the States assent to the continued deprivation of claimant's rights.

5. In another matter, Asarnow v. City of Long Branch, et al. Docket MON-L-5080-98 brought as a prerogative writ and a 42 U.S.C. Sec 1983 action involving civil rights issues relating to Plaintiff's property... In that matter Plaintiff shows the City knew of egregious zoning violations on neighboring properties well before 10/7/98 when the complaint was filed yet refuses to properly enforce while simultaneously maintaining all its ordinances are readily and uniformly enforced. (Mayor's deposition: "only a phone call is needed to have ordinances enforced") This constitutes selective enforcement and deprivation of equal protection of the laws. The facts of that record show LB engaged in harassment, retaliation and selective enforcement and restricts Plaintiff's use of his property after Plaintiff sought enforcement of its ordinances. It and its municipal court perpetrated numerous other misdeeds in violation of

Plaintiff's constitutional rights and have caused losses to and distress to Plaintiff. In its frivolous counterclaims LB sought to force Plaintiff to make improvements based upon a mere zoning permit, install sewer service though having no jurisdiction to do so, and claims violations exist though no summons issued.

When Plaintiff under pressure to install sewer service decides to do so, LBSA changes its Rules to force Plaintiff to pay the cost of the extension while his neighbors have not and colludes with LB to deny necessary permits unless LBSA contractors are used. As. related in claimant brief and at the hearing. these new rules appear to be fraudently concocted. state no effective date and did not surf act until 21/2 years after claimant's application for sewer service and appear designed solely to avoid its statutory responsibilities and have claimant pay for and do its work. The former chairman of LBSA, present when the actual new rules were adopted affirms claimant's position.

All was in evidence before the courts in Plaintiff's briefs.

6. The assignment judge first prevented Plaintiff from obtaining any injunctive relief for the illegal use of neighboring commercial properties despite the close proximity and severe inconvenience claiming not an action in lieu of prerogative writ. No hearing was afforded.

7. The second pretrial judge, affirmed the denial of standing without prejudice stating petitioner was not an ombudsman and dismissed 4 counts of the complaint which sought non sec 1983 damages.

8. The third pretrial judge ended discovery suddenly without notice or warning when Plaintiff made a motion to obtain non-evasive answers, documents, depositions, expert reports and public records which he had **been seeking for months** and to which he is entitled, when Plaintiff appeared to be close to getting additional useful discovery, and Defendants objected using the guise of harassment, one of Plaintiff's allegations/counts.

9. The fourth and last pretrial judge was a conflicts judge for another who had to be twice recused due to his previous professional relationship with the sewerage authority attorney and as evidenced by the conflict judge's summary decision, the two may have discussed the matter with the same objective in mind. A comparison of this "good" judges transcript decision of November 3, 2000 (Exhibit L) to the Amended Complaint and brief will show that he only adjudicated on selective enforcement and the sewer issue of the remaining 13 counts of the Amended Complaint as no findings exist as required by law as to these others.
The Appeal decision (Exhibit O, Pg 11-2) affirms only two issues were dealt with. Yet he casually and summarily dismissed these other Federal counts contrary to law though genuine differences were demonstrated to exist in the briefs between the parties for each count. In the two adjudicated counts, he would not let a jury determine the facts as to whether selective enforcement exists, deciding it did not despite the above and other evidence. The court had the papers to review for 2 weeks each on two occasions yet the court's unfamiliarity with the two briefs (both defendant's filed motions for summary judgment) is especially evident in findings related to the sewerage authority rules. The court first asks at court the empowering statute number and asks that the statute be brought to the court for an obvious first review of this important issue (11/3/00TR. 18-12) After a 5 minute review of the statute (the transcript indicates no time or attention or break being given to review the statute) a decision is made that deals with the usage and connection fees, an issue not in dispute, and not with who pays for the cost of extending the main, the issue in dispute. The court found LBSA can make whatever rules it wants (though being in conflict with empowering Statutes and the equal protection clause of the US Constitution). The court did find however that Long Branch may have unjustly denied Plaintiff consideration for permits. (Order, Exhibit M)

11. A motion for reconsideration was filed April 20, 2002 in the Appellate Div. and Plaintiff has sent letters to the Administrative Office of the Courts (AOC) and Chair of the Senate Judiciary Committee advising of the denial of due process and asking them to have investigated the apparent political/judicial corruption behind these unlawful, unjust decisions. Judiciary Committee has deferred to AOC which has determined everything is "A-OK" with AOC. Though AOC is headed by a judge appointed by the NJ Supreme Court to oversee the courts and see that judges enforce the laws, an earlier letter from AOC disavows this and states that only an Appellate or Supreme Court judge can determine whether laws are applied, and not AOC (Exhibit P) This appearance of, but lack of true accountability, coupled with the hearing of only 100 cases a year by the US Supreme Court and the news media's failure to cover this explains why some judges feel they can get away with failing to do their job and enforce the laws which they vowed to uphold.

13. As a direct consequence of the stress of being treated as a second class citizen and in prosecuting his rights, Plaintiff has been depressed and on or about January 2002 was diagnosed with type II diabetes which has had further impact on his way of life.

14. **As a result of the aforesaid and other willful unlawful actions of Defendants New Jersey and New Jersey Superior Court under color of state law, Plaintiff has been deprived of procedural due process or a fair, impartial, disinterested disposition on all issues raised, substantive due process, equal protection/application of laws and a jury trial as demanded in his prior complaints and has been thereby harmed. This violates Plaintiffs rights under the Seventh and Fourteenth Amendment- Section 1. of the US Constitution and**

Article 1- Sections 1,9 and 21 of The Constitution of New Jersey.

WHEREFORE, Plaintiff, Brian D. Asarnow, demands trial by a jury pursuant to N.J.S.A 52:4A-l and the Seventh Amendment of the US Constitution and Article I Section 9 of The New Jersey Constitution based upon the existing record, with judgment against the Defendants, New Jersey and New Jersey Superior Court for:

A. A jury verdict, finding that the Defendants have willfully, invidiously, unconscionably or otherwise not in error deprived Plaintiff of his rights under the Seventh and Fourteenth Amendment- Section 1. of the US Constitution and Article 1- Sections 1,9 and 21 of The Constitution of New Jersey.

B. A jury verdict awarding compensatory damages in the amount of $26,350 as of August 26, 2002 for the automobile and $100,000 due to property devaluation incurred based upon two appraisals and installation of a sewer main extension and due to costs associated with arbitrary actions of Long Branch, or other amounts calculated by the jury.

C. A jury verdict awarding consequential damages to Plaintiff of $200,000 for loss of his constitutional rights, loss of his way of life, and emotional, physical and medical distress including diabetes and depression resulting from being treated as a second class citizen, or other amount calculated by the jury.

D. Any Attorney fees and costs of suit and appeals as allowed under common law.

E. For such other and further relief as a jury may deem equitable and just and be entitled to find including punitive damages considering Defendant's willful, invidious and unconscionable deprivation of Plaintiffs substantive rights.

SECOND COUNT

1. Plaintiff Brian D. Asarnow, repeats each and every allegation of the First Count of the Complaint as if same were fully set forth at length herein, and makes same a part of this Count.

2. Defendant's actions in depriving Plaintiff of his rights and treating him as a second class citizen stems from a policy of deliberate indifference to those rights due to a lack of real judicial accountability and negligence in preventing and in allowing the torts to continue unabated.

WHEREFORE, Plaintiff, Brian D. Asarnow, demands trial by a jury pursuant to N.J.S.A 52:4A-l and N.J.S.A. 59:1-1 et seq., and the Seventh Amendment of the US Constitution and Article I Section 9 of The New Jersey Constitution based upon the existing record, with judgment against the Defendants, New Jersey and New Jersey Superior Court for:

A. A jury verdict, finding that the Defendants are negligent under N.J.S.A 59:1-1 et seq. in failing to prevent the aforementioned constitutional, mental and physical torts and for allowing this to continue unabated thru a policy of deliberate indifference, and not otherwise in error.

B. A jury verdict awarding damages to Plaintiff of $200,000 for loss of his constitutional rights, loss of his way of life, and emotional, physical and medical distress including diabetes and depression resulting from being treated as a second class citizen, or such other amount the jury may calculate.

C. Any Attorney fees and costs of suit and appeals as allowed under common law.

D. For such other and further relief as a jury may deem equitable and just and be entitled to find including punitive damages considering Defendant's gross negligence in preventing and in allowing the aforementioned constitutional, mental and physical torts to occur to Plaintiff's detriment.

Brian D. Asarnow
Pro Se Plaintiff

Dated: August 26, 2002

Excerpts from Third Amended Complaint

16. On August 29, 2003 a different, experienced, Monmouth judge outrageously, unlawfully and not in error, Ordered that Plaintiff pay $3022.93 as costs in the Long Branch matter, though knowingly having no jurisdiction to do so and to purposefully force another appeal and which further evidences the purposeful denial of due process and targeting of Plaintiff.

On or about May 6, 2003 Long Branch (LB) filed a motion for costs at the trial level attempting to improperly use the standard Supreme Court order which allows costs upon denial of petition to attempt to garner $3022.93 in costs for all levels. (The Appellate Order was silent as to costs)

The judge would give LB three bites/chances to attempt this though knowing he had no jurisdiction to fix costs as to the Appellate and Supreme Court since the parties had foreclosed the issue of costs at the trial and Appellate level by consenting to a legally binding voluntary withdrawal on all remaining issues due to the earlier judge's failure to adjudicate these issues and so an appeal could be had. After earlier appearing to limit costs to the Appellate and Supreme Court levels, the court did an about face and on August 29, 2003 awarded virtually all the costs sought by Plaintiff (it forgot to add the $40 last sought by LB). This despite the above and using Plaintiff's voluntary settlement/withdrawal of the surviving permit issue as evidence it was without merit and as further proof that LB prevailed. (LB also withdrew three claims, which the court ignored) It sadly seized upon a 1938 case offered by LB which predates the governing cost statutes as cover to take jurisdiction of the Appellate and Supreme Court costs. It was pointed out to the court that its behavior goes against strongest public policy to settle disputes as does its encouraging an appeal due to its arbitrary reversal and findings. (The court sadly states that since taxpayer dollars are involved, it is following public policy by awarding the public entity whatever costs it wants,

though having no jurisdiction to do so.) The court also fails to substantively tax costs as required by statute and ignores arguments that the actual costs sought are either not allowed or necessary under the statutes.

One wonders how this experienced judge could who claims to have previously considered costs motions, nevertheless, acts as if having no prior knowledge in properly deciding costs which are statutory and thereby meant to prevent just this sort of abuse. It seems obvious from the record that neither LB or the court had traveled this road before and that the court must have therefore felt it had cover to do this.

17. Upon information and belief the breadth of the denial of Plaintiff's meaningful access to the courts by the various courts may in part be due to the willingness and readiness of those courts to become influenced by third parties due to the aforementioned lack of accountability and credible deterrence. This would also violate CJC 1 thru 3.

18. **Upon information and belief; the courts may have acted in bad faith, displayed an interest and discriminated against Plaintiff as evidenced by the consistent denial of his substantive rights**. Plaintiff's neighbor with no approvals for its illegal, non-conforming use, is a snow removal contractor for NJDOT. On or about May 25, 2003 NJDOT removed at least 6 plows from E&L lots which lack approvals and the use of which depreciates Plaintiff's property.

19. Upon information and belief; then members of the senate judiciary committee, which recommends the appointment and removal of judges for the most part practice law before these same courts and this inherent conflict may explain their resistance to taking enforcement action against the judiciary for knowingly and purposefully failing to enforce court rules, laws and public policy and the US and NJ Constitutions as required under the C.J.C.

20. Upon information and belief, The Director of the AOC is appointed by the Chief Justice of the NJ Supreme Court and key employees are political appointees and AOC has an inherent conflict on the one hand of wanting the courts appear to be impartial and deliberate, and on the other hand of disciplining judges and thereby admitting fault with the court system. Upon information and belief it is rare if at all that judges are terminated in NJ for egregiously denying procedural and substantive due process to claimants as required by the CJC, not in error, and though the case-law is conveniently placed in front of them.

21. **As a direct consequence of the courts failure to provide access for the vindication of his substantive rights and in being treated us a second class citizen, Plaintiff has incurred real losses and damages as detailed in his Tort Notice, portions of which are attached hereto as exhibit O provided as a courtesy as to the constitutional claims so to enable Defendant to investigate them. Upon information and belief and based upon the recent decision as to costs, Defendant has not as yet done so and remains deliberately indifferent to Plaintiff's rights.**